

**Minutes
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

November 11, 2010

- I. CALL TO ORDER** - The meeting was called to order at 1:34 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Carolyn Richardson, Chair; Mike Cravens, Vice Chair; Lynn Roche-Phillips (departed at 4:45 PM); Marie Copeland; Mike Owens; Carla Blanton; Patrick Brewer; Eunice Beatty and Derek Paulsen. Member Ed Holmes and William Wilson were absent.

Planning Staff Present – Chris King, Bill Sallee, Barbara Rackers, Tom Martin, Cheryl Gallt, Jimmy Emmons, Traci Wade and Denice Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Captain Charles Bowen and Firefighter Allen Case, Division of Fire & Emergency Services; Rochelle Boland, Department of Law; Jeff Neal, Traffic Engineering; Gregg Jones, Division of Police, Bob Carpenter, Division of Building Inspection and Bettie Kerr and Amelia Armstrong, Division of Historic Preservation.

- II. APPROVAL OF MINUTES** – The Chair reminded the members that there were no prior Planning Commission meeting minutes to be considered at this time.

- III. POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

- a. DP 2010-46: L.T. RUTH PROPERTY (AMD) (10/31/10)* - located at 1301 and 1351 Newtown Pike.
(Council District 2) **(Vision Engineering)**

Representation – Matt Carter, Vision Engineering, was present representing the applicant, and requested postponement of DP 2010-46 to the November 18, 2010, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 9-0 (Holmes and Wilson absent) to postpone DP 2010-46 to the November 18, 2010, Planning Commission meeting.

- b. PLAN 2010-129F: SUNNY SLOPE FARM, UNIT 3-C, SECTION 2, LOTS 102 & 103 (AMD) (1/20/11)* - located on Silverbell Trace. (Council District 9) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2010-129F to the December 9, 2010, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Brewer, and carried 9-0 (Holmes and Wilson absent) to postpone PLAN 2010-129F to the December 9, 2010, Planning Commission meeting.

- c. DP 2006-65: BLACKFORD PROPERTY, PHASES 1 & 2 (AMD.) (11/14/10)* – located at 6600 Man O' War Boulevard (a portion of). (Council District 12) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2006-65 to the January 13, 2011, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 9-0 (Holmes and Wilson absent) to postpone DP 2006-65 to the January 13, 2011, Planning Commission meeting.

- d. DP 2010-69: SUNNY SLOPE FARM, UNIT 3, LOTS 102-106 (1/20/11)* - located on Silverbell Trace.
(Council District 9) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2010-69 to the December 9, 2010, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

* - Denotes date by which Commission must either approve or disapprove plan.

Action - A motion was made by Mr. Brewer, seconded by Mr. Owens, and carried 9-0 (Holmes and Wilson absent) to postpone DP 2010-69 to the December 9, 2010, Planning Commission meeting.

- e. PLAN 2010-100F: NDC PROPERTY (WELLINGTON), UNIT 1-B, SECTION 2, LOTS 19 & 20 (AMD) (12/2/10)* - located at 209 Ruccio Way. (Council District 9) **(Foster-Roland, Inc.)**

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement PLAN 2010-100F to the December 9, 2010, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Owens, seconded by Ms. Beatty, and carried 9-0 (Holmes and Wilson absent) to postpone PLAN 2010-100F to the December 9, 2010, Planning Commission meeting.

- f. DP 2010-70: LEXINGTON PLAZA (AMD) (1/20/11)* - located at 1549 North Limestone. **(EA Partners)**
(Council District 1)

Representation – Bruce Simpson, attorney, was present representing the applicant, and requested postponement of DP 2010-70 to the November 18, 2010, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Mr. Paulsen, and carried 9-0 (Holmes and Wilson absent) to postpone DP 2010-70 to the November 18, 2010, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, November 4, 2010, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Marie Copeland, Eunice Beatty and Derek Paulsen. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor and Denise Bullock, as well as Captain Charles Bowen, and Firefighter Allen Case, Division of Fire & Emergency Services; Rochelle Boland, Law Department; Annette Cook and Paul Hockensmith, Addressing Office; and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

- 1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
- 2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- A. **CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

Criteria: (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
(2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
(3) no discussion of the item is desired by the Commission; and
(4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
(5) the matter does not involve a waiver of the Land Subdivision Regulations.

Requests can be made to remove items from the Consent Agenda: (1) due to prior postponements and withdrawals,
(2) from the Planning Commission,
(3) from the audience, and
(4) from Petitioners and their representatives.

At this time, The Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of all of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2010-115F: BLUEGRASS EXECUTIVE PARK, UNIT 1B, BLOCK F, LOTS 2 & 7 (AMD) (1/2/11)* - located at 2241 Buena Vista Road and 2250 Thunderstick Drive. (Council District 6) **(EA Partners)**

The Subdivision Committee Recommended: Approval, subject to the following requirements:

* - Denotes date by which Commission must either approve or disapprove plan.

1. Urban County Engineer's acceptance of drainage, storm sewer, sanitary sewers and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s).
 6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
 7. Denote the computed floodplain elevations.
 8. Denote the timing of the required tree installation on Lot 2 and the street tree installation on Lots 2 and 7.
 9. No certification of this plan unless the Urban County Council rezones a portion of the property P-1; otherwise, any Commission action of approval is null and void.
2. PLAN 2010-116F: CLARK PROPERTY, UNIT 1-N (1/2/11)* - located at 3275 Polo Club Boulevard.
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s).
 6. Greenspace Planner's approval of the treatment of greenways and greenspace.
 7. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
 8. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
 9. Delete development standards from greenway lot.
 10. Addition of exaction information to the approval of the Division of Planning.
3. PLAN 2010-119F: CLARK PROPERTY, UNIT 2-C (1/2/11)* - located at 3335 Polo Club Boulevard (a portion of).
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s).
 6. Department of Environmental Quality's approval of environmentally sensitive areas.
 7. Greenspace Planner's approval of the treatment of greenways and greenspace.
 8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
 9. Addition of exaction information to the approval of the Division of Planning.
 10. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
 11. Resolve pedestrian access easement cross-section and easement fencing.
4. PLAN 2010-120F: CLARK PROPERTY, UNIT 2-D (1/2/11)* - located at 3335 Polo Club Boulevard (a portion of).
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s).
 6. Department of Environmental Quality's approval of environmentally sensitive areas.
 7. Greenspace Planner's approval of the treatment of greenways and greenspace.
 8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
 9. Addition of exaction information to the approval of the Division of Planning.
 10. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
 11. Resolve pedestrian access easement cross-section and easement fencing.
5. PLAN 2010-121F: CLARK PROPERTY, UNIT 2-E (1/2/11)* - located at 3335 Polo Club Boulevard.
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.

* - Denotes date by which Commission must either approve or disapprove plan.

2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
8. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
9. Addition of exaction information to the approval of the Division of Planning.
10. Resolve pedestrian access easement cross-section and easement fencing.

6. PLAN 2010-122F: CLARK PROPERTY, UNIT 2-F (1/2/11)* - located at 3335 Polo Club Boulevard (a portion of).
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
7. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
8. Addition of exaction information to the approval of the Division of Planning.

7. PLAN 2010-123F: CLARK PROPERTY, UNIT 2-G (1/2/11)* - located at 3335 Polo Club Boulevard (a portion of).
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
8. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
9. Addition of exaction information to the approval of the Division of Planning.

8. PLAN 2010-124F: CLARK PROPERTY, UNIT 2-H (1/2/11)* - located at 3335 Polo Club Boulevard (a portion of).
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
9. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
10. Addition of exaction information to the approval of the Division of Planning.

9. DP 2010-61: TOLLY-HO PROPERTY (1/2/11)* - located at 604 and 606 South Broadway.
(Council District 3) **(Vision Engineering)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.

* - Denotes date by which Commission must either approve or disapprove plan.

8. Correct note #11.
 9. Document off-site parking agreement.
 10. Delete note #10.
 11. Correct Planning Commission's certification date.
 12. Relocate dumpster out of 5' landscape buffer.
 13. Remove cross hatching shown in parking lots.
 14. Clarify height of raised planters.
 15. Identify and label all building canopies proposed.
10. DP 2010-62: MERCANTILE CENTER (PARAGON CENTER) (AMD) (1/2/11)* - located at 2376 Alexandria Drive.
(Council District 10) **(Carman Engineering)**

Note: The purpose of this amendment is to add buildable area on Lot 1.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection plan.
 6. Division of Fire's approval of emergency access and fire hydrant locations.
 7. Division of Waste Management's approval of refuse collection.
 8. Correct notes #5 and #14.
 9. Denote tree canopy information for Lot 1, Block B.
 10. Addition of access dimension for Alexandria Drive and Harrodsburg Road cross-section (from plat).
 11. Denote final record plat designation.
 12. Provide name and address of developer.
 13. Correct Planning Commission certification date.
 14. Denote the location of the on-site and/or off-site detention.
 15. Addition of building dimensions and sidewalk details on Lot 1, Block B.
11. DP 2010-67: HAMBURG PLACE FARM, SIR BARTON OFFICE PARK, LOT F (AMD #7) (1/16/11)* - located at 2721 Old Rosebud Road. (Council District 6) **(HDR)**

Note: The purpose of this amendment is to convert Lot F from retail warehouse to office warehouse and to add 5 parking spaces per the requirements.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscaping buffer.
4. Addressing Office's approval of street names and addresses.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Waste Management's approval of refuse collection details.
7. Correct address in note #37.
8. Clearly delineate the area of this amendment.
9. Clarify size or number of parking space(s) adjacent to proposed office-warehouse building.
10. Addition of dimensions for drive aisles and access points.
11. Resolve conflict with additional 5 parking spaces and landscape buffer (evergreen).
12. Resolve the timing of previously required improvements to terminus of Old Rosebud Road.
13. Review by the Technical Committee prior to certification.

In conclusion, Mr. Saltee said that the items listed on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration for discussion purposes.

Consent Agenda Comments – The Chair asked if anyone in the audience or on the Commission wished to discuss any of the items listed on the Consent Agenda. Mr. Richard Murphy, attorney, requested that PLAN 2010-119F, PLAN 2010-120F and PLAN 2010-121F be removed from the Consent Agenda for further discussion by the Commission, in fairness to the Division of Police.

Action - A motion was made by Mr. Owens, seconded by Mr. Cravens and carried 9-0 (Holmes and Wilson absent) to approve the remaining items listed on the Consent Agenda.

- A. **DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

* - Denotes date by which Commission must either approve or disapprove plan.

The procedure for consideration of these remaining plans is as follows:

- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments
- Commission discusses and/or votes on the plan

1. FINAL SUBDIVISION PLANS

- a. PLAN 2010-114F: WOODWARD-LANDER PROPERTY, UNIT 1A, LOT 108, SEC. 2 (1/2/11)* - located at 3180 Sandersville Road and 3125 Daly Place. (Council District 12) **(Midwest Engineers)**

The Subdivision Committee Recommended: Referral. There were concerns with the number of conditions recommended by the Technical Committee on the plan.

Should this plan be approved, the following amended requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
7. Correct adjoining property information.
8. Denote permanent control measures, per Article 6 of the Land Subdivision Regulations.
9. Addition of conditional zoning notes.
10. Complete applicable street tree information.
11. Document that the building line on Lot 143 complies with frontage requirements.
12. Relocate recording stamp box to lower right corner of plat.
13. Denote number and location of trees to be planted to meet tree canopy requirements.
14. Complete deed book and page information in property owner's certification.
15. Correct 5' landscape buffer easement dimension per previous plat.
16. Denote that 1.0' dimensional difference for the access easement from the previous plat is "as built."

Staff Presentation – Mr. Martin directed the Commission's attention to the amended final record plat for the Woodward-Lander Property. This property is located at 3180 Sandersville Road and 3125 Daly Place.

Mr. Martin briefly oriented the Commission to the rendering of the zoning map and illustrated the overall layout of the surrounding area. He noted that the subject property is located on the northwest side of Lexington, and is near the I-64 and I-75 interchange. He indicated that there is Public Park nearby, as well as the Masterson Station development. He said that the subject site backs up to the Kentucky House of Reform property, at the Urban Service Area boundary. He then said that the subject site is situated at the corner of Sandersville Road and Daly Place, just off Spurr Road and Tiburon Way.

Mr. Martin then directed the Commission's attention to the rendering for the amended final record plat, and said that the purpose of this amendment is to subdivide one lot into six lots for a townhouse development. He noted that the Planning Commission had previously approved Section 1 of this subdivision, and since that time those lots have been recorded.

Mr. Martin stated that the Technical Committee and the staff had reviewed the applicant's plat request, and recommended approval to the Subdivision Committee, subject to the conditions listed on the agenda. However, at the Subdivision Committee meeting, the applicant's request was recommended for referral to the full Commission due to the excessive number of clean-up type of conditions listed on the agenda. Subsequently, the staff had received a revised plan that addressed all the "clean-up" conditions identified at last week's Subdivision Committee meeting.

Therefore, Mr. Martin said that the staff can now recommend approval of the plan, subject to the remaining "sign-off" type of conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
7. ~~Correct adjoining property information.~~
8. ~~Denote permanent control measures, per Article 6 of the Land Subdivision Regulations.~~

* - Denotes date by which Commission must either approve or disapprove plan.

9. ~~Addition of conditional zoning notes.~~
10. ~~Complete applicable street tree information.~~
11. ~~Document that the building line on Lot 143 complies with frontage requirements.~~
12. ~~Relocate recording stamp box to lower right corner of plat.~~
13. ~~Denote number and location of trees to be planted to meet tree canopy requirements.~~
14. ~~Complete deed book and page information in property owner's certification.~~
15. ~~Correct 5' landscape buffer easement dimension per previous plat.~~
16. ~~Denote that 1.0' dimensional difference for the access easement from the previous plat is "as built."~~

In conclusion, Mr. Martin said that with the revised submittal, the staff is recommending approval, subject to the remaining six conditions.

Representation – Tom Lambdin, Midwest Engineering, was present. He noted that they have addressed the Subdivision Committee concerns in regard to the clean-up issues, they are in agreement with the remaining conditions, and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Cravens and seconded by Ms. Beatty to approve PLAN 2010-114F, subject to the revised conditions listed by the staff.

Discussion – Mr. Owens said that he appreciated the time the applicant spent on this revision in order to bring it forward to the entire Planning Commission.

The motion carried 9-0 (Holmes and Wilson absent).

- b. PLAN 2010-117F: CLARK PROPERTY, UNIT 2-A (1/2/11)* - located at 3335 Polo Club Boulevard (a portion of).
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: Referral. There were concerns with the resolution of the conflict between the tree protection area and the sanitary sewer easement proposed.

Should this plan be approved, the following amended requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
9. Addition of exaction information to the approval of the Division of Planning.
10. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
11. Complete the 20' Tree Protection Area along future development (Lots 1-4).
12. Show "no parking area" from final development/preliminary subdivision plan.
13. Denote no driveway access to Polo Club Boulevard from Lots 1, 148 and 106.
14. Resolve the 20' TPA conflict with 20' sanitary sewer and utility easement on Lots 1, 2 and 3.

Staff Presentation – Ms. Gallt directed the Commission's attention to a rendering of the plat for the Clark Property, Unit 2-A. She oriented the Commission to the property located on Polo Club Boulevard, and to the surrounding street system. She said that, to the southeast of the subject property is the Sikura-Justice Property and Man O' War Boulevard; and east of the subject property is Deer Haven Lane. She noted that Unit 2-A abuts Polo Club Boulevard, which extends from Man O' War Boulevard south as far as Todds Road.

Ms. Gallt said that when the preliminary development plan for this area was originally approved by the Planning Commission, it had proposed a 20' tree protection area running the eastern length of Unit 2-A, from Polo Club Boulevard to the rear of the site. At that time, it was determined that a 20' tree protection area should be retained and separated from the sanitary sewer easement. She then said, that in reviewing the submitted Final Record Plat for Unit 2-A, part of the 20' tree protection area had been removed from lots 1 through 4 near Polo Club Boulevard. She added that the plat also indicates that the sanitary sewer easement is shown to run along the property boundary, which is inside the 20' tree protection area.

Ms. Gallt said that the Subdivision Committee had reviewed this request at their November meeting, and believed the conflicts between the tree protection area and the sanitary sewer easement were enough justification for their

* - Denotes date by which Commission must either approve or disapprove plan.

recommendation of referral to the full Commission. She then said that should the Planning Commission approve this request, aforementioned requirements listed on the agenda should be considered.

In conclusion, Ms. Gallt said that, as part of the Subdivision Regulations requirements, a 30% Improvement Report was also submitted; however, that report did not indicate that any portions of the 20' tree protection area were being removed.

Planning Commission Questions – Ms. Copeland asked if there is a stream near or within the tree protection area. Ms. Gallt said that she did not know the answer to that question and referred it to the applicant's engineer.

Mr. Owens clarified that when the Final Record Plat was submitted for review, it was referred by the Committee due to the conflict between the 20' tree protection area and the sanitary sewer easement. Ms. Gallt said that when the plat was compared to the Preliminary Development Plan, the tree protection area and sanitary sewer easements did not match. Mr. Owens asked if this conflict was noted in the field work. Ms. Gallt replied negatively. Mr. Owens then asked how condition number 14 would be resolved. Mr. Martin replied that the tree protection area could taper down in its width in order to keep the easement separated.

Mr. Brewer said that if the tree protection area were too tapered, it would result in no tree protection area for the lots near Polo Club Boulevard. Mr. Martin said that the applicant has conferred with Mr. Queary (Urban Forester), and it was determined that there were no significant trees in the lower area; therefore, there would be no conflict.

Representation – Al Gross, EA Partners, was present representing the applicant. He submitted a schematic to the Commission that illustrated a 40' tree protection area and the 20' sanitary sewer and utility easement. He said that from the preliminary stage, the goal here was to save as many trees as possible. However, due to a drafting issue by one of his staff members, the tree protection area layer was inadvertently left off the lower lots near Polo Club Boulevard. In reviewing the schematic for Unit 2-A and the future Clark Property on the adjacent land, the tree protection area will be 20' wide on each property, totaling 40 feet – when added to the adjoining (future) unit. He noted that there is a stream that extends from the east to the Blackford Property.

Mr. Gross then directed the Commission's attention to the 20' sanitary sewer and utility easement noted on the schematic. He said that in reviewing the layout of the easement, the pipe line is out of the tree protection area, as well as out of the stream area. He indicated that there was an existing encasement pipe constructed under Polo Club Boulevard, and it will connect to the future sanitary sewer line that will serve the lots on Unit 2-A.

Mr. Gross said that the lots 1-4 are in violation of the 20' tree protection area, but that is due to the installation of the sanitary sewer line. He then said that this will be resolved by placing additional tree protection area on the adjacent Clark Property (future). He noted that the Urban Forester had been on site, and is fully aware of the situation. Mr. Gross believed that if Mr. Queary were present, he would endorse the fact that numerous trees are being saved and the violation of the tree protection area is minimal for lots 1-4.

In conclusion, Mr. Gross apologized for their error, and reiterated that numerous trees are being retained and saved in this portion of the property. He then said that they are in agreement with the staff's recommendations, and requested approval of this plat.

Audience Comment – Dick Murphy, attorney, was present representing the North Forty Properties. He directed the Commission's attention to Article 26-10 of the Zoning Ordinance (regarding utilities) and read the following into the record:

Where required, the reasonable removal of existing trees and/or location of new trees shall accommodate the placement and installation of such utilities.

Mr. Murphy said that there is an existing sanitary sewer sleeve under Polo Club Boulevard that will tie into the new sewer line, and the route of the line has been diverted out of the tree protection area. He then said that the Urban Forester had reaffirmed to them that no significant trees were removed; only honeysuckle.

Planning Commission Questions – Mr. Owens said that he understands that adjustments need to be made after a site visit, but this request should have been submitted to the Planning Commission with the 30% Infrastructure Report. Mr. Gross said that before a grading permit can be obtained from Building Inspection, the erosion and silt control and the tree protection area must be established. After that point, a Preconstruction Conference is held with the different governmental divisions. This meeting allows an in-depth discussion of the proposal and determines the location of stakes to be marked. He said that this type of conflict happens all the time, and they did not believe this conflict was significant enough to "reengage the process." He then said that the sewer line is going through a tree protection area, but there are no significant trees within that area. They did not believe they had violated the spirit of the tree protection area, which in retrospect was bad judgment on their part. To help alleviate any concern, he suggested that a staff member from the Division of Planning and a member of the Planning Commission be present during the preconstruction conference. Mr. Gross said that this proposed change was very minimal and it did not occur to them to add this to the submitted Infrastructure Report. He again apologized for their mistake.

* - Denotes date by which Commission must either approve or disapprove plan.

Action - A motion was made by Mr. Cravens and seconded by Mr. Paulsen to approve PLAN 2010-117F, subject to the conditions listed by the staff.

Discussion of Motion – Ms. Copeland asked how the transfer of the tree protection area to the future development of the Clark Property will be resolved, and if condition number 14 should be revised to denote the transfer. Mr. Martin said that condition number 14 should remain as is; and when the future development of the Clark Property is proposed, the tree protection area will be resolved at that time.

The motion carried 9-0 (Holmes and Wilson absent).

Note: The next three items were heard simultaneously.

- c. PLAN 2010-119F: CLARK PROPERTY, UNIT 2-C (1/2/11)* - located at 3335 Polo Club Boulevard (a portion of).
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
9. Addition of exaction information to the approval of the Division of Planning.
10. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
11. Resolve pedestrian access easement cross-section and easement fencing.

- d. PLAN 2010-120F: CLARK PROPERTY, UNIT 2-D (1/2/11)* - located at 3335 Polo Club Boulevard (a portion of).
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
9. Addition of exaction information to the approval of the Division of Planning.
10. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
11. Resolve pedestrian access easement cross-section and easement fencing.

- e. PLAN 2010-121F: CLARK PROPERTY, UNIT 2-E (1/2/11)* - located at 3335 Polo Club Boulevard.
(Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
8. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
9. Addition of exaction information to the approval of the Division of Planning.
10. Resolve pedestrian access easement cross-section and easement fencing.

Staff Comments - Mr. Sallee said that the staff was unaware of any concerns related to PLAN 2010-119F, PLAN 2010-120F and PLAN 2010-121F that led to these being removed from the Consent Agenda earlier in the meeting. In order to review

* - Denotes date by which Commission must either approve or disapprove plan.

these requests and fully discuss the concerns, the staff would now requests that the Commission postpone these items one week to the November 18, 2010, meeting.

Representation – Dick Murphy, attorney, was present representing the applicant. He said that if the Division of Police is agreeable with the postponement, as is the applicant. He noted that Lieutenant Gregg Jones is in the Chamber, and he indicated his agreement to the postponement request.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 9-0 (Holmes and Wilson absent) to postpone PLAN 2010-119F, PLAN 2010-120F and PLAN 2010-121F to the November 18, 2010, Planning Commission meeting.

3. DEVELOPMENT PLANS

- a. DP 2010-15: GESS PROPERTY, UNIT 8 (10/14/10)* - located at 840 Hays Boulevard and 4115 Sperling Drive (a portion of). (Council District 7) **(EA Partners)**

Note: This development plan requires the posting of a sign and an affidavit of such. The Planning Commission postponed this plan at its April 8, 2010; May 13, 2010; July 8, 2010; August 12, 2010; September 9, 2010; and October 14, 2010, meetings.

The Subdivision Committee Recommended: Postponement (on April 1, 2010). There were questions regarding compliance with the Community Design Element of the EAMP for portions of the apartment complex and for the proposed convenience store. In addition, completion of the pedestrian system is necessary for this development.

Note: A revised plan was submitted on November 1st to address many of the concerns previously raised by the staff; and the applicant has removed the mixed use portions of the development originally proposed in the CC zone, proposing only residential development in that portion of the subject property at this time.

The Subdivision Committee discussed this postponed plan at some length at their past two meetings. With this latest submission, the staff still had questions about whether the proposed drive aisles and vehicular access for the northern portion of the apartment complex met the request by the Division of Fire and Emergency Services for greater connectivity within that portion of the development. However, at the November 4th Subdivision Committee meeting, it was reported that this latest version of the development plan meets their vehicular requirements. As a result, the staff can now offer a revised recommendation on this development plan.

The Staff Recommends: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection and canopy information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of new access details and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection locations.
11. Provide landscaping details between apartments and single family lots on plan, per Article 23A-2(r).
12. Complete sidewalk connections between apartment buildings in "open space" area.
13. Clarify tree preservation proposed within identified Greenway areas.
14. Clarify open space preservation in previously labeled northern "park" area.
15. Relocate apartment building #3 a minimum of 20' from the Athens-Chilesburg School property.
16. Denote lighting restrictions for buildings and parking lots in multi-family areas.
17. Denote that building heights will comply with Article 23A-6(g) of the Zoning Ordinance.
18. Identify construction access point(s) off Sperling Drive.
19. List exactions due at time of building permit (on this plan).
20. Detail the landscaping proposed on Sperling Drive entrances (per ZDP Design Standards).
21. Delete the note reference to a proposed construction access off Jouett Creek Drive.
22. Revise Note #19, deleting the word "conditional."

Staff Presentation – Mr. Sallee directed the Commission's attention to the final development plan and preliminary subdivision plan for the Gess Property, Unit 8, and noted that this property has an address of 4115 Sperling Drive. He said that the Planning Commission had postponed this request many times since it was first submitted; and, most-recently, this proposal was reviewed by the Subdivision Committee at their last two meetings.

* - Denotes date by which Commission must either approve or disapprove plan.

Mr. Sallee then said that the staff has received a number of communications regarding this proposal, and many of those email and letters were distributed to both the Subdivision and to the Zoning Committees for review. Since that time, the staff has received many more letters concerning this proposal. He submitted all correspondence received regarding this item to the Commission. (A copy of these items is attached as an appendix to these minutes).

Mr. Sallee directed the Commission's attention to the rendering of the USA Zoning Map for this area, and oriented them to the street system surrounding the subject site. He said that the subject property is situated south of Todds Road, east of Hays Boulevard, and west of Interstate 75, and is adjacent to Unit 7. He noted that Hays Boulevard connects Todds Road to Athens-Boonesboro Road.

Mr. Sallee stated that the subject property is approximately 37.76 acres in size and it abuts the Hays Boulevard right-of-way to the east. He said that the subject property currently has three different zoning designations associated with the development; these include CC, EAR-1 and EAR-2. He then said that the subject property is at the northeast corner of Sperling Drive and Hays Boulevard, with a small portion fronting Jouett Creek. Mr. Sallee then stated that the Athens-Chilesburg Elementary School will be located on a 15-acre tract immediately to the north of the subject property.

Mr. Sallee said that the EAR-2 zone allows residential development with a density between 3 to 6 dwelling units per gross acre. In addition, there is a 9-acre tract designated as a Transition Area (TA) overlay zone. The TA overlay zone accompanies the underlying EAR-2 zone, which allows additional uses as part of the overlay. He then said that when the Expansion Area Master Plan was originally approved in the mid 90s, it was anticipated that the TA overlay zone would allow civic uses, such as libraries, schools, churches and so forth that would not normally be allowed in the EAR-2 zone.

Mr. Sallee then said that at the corner of Hays Boulevard and Sperling Drive, there is an 11-acre tract that is located in a Community Center (CC) zone. The CC zone allows retail uses, restaurants and a number of commercial uses. The CC zone also requires a minimum of 40 percent of the floor area to be devoted to residential uses. In reviewing the development plan, the CC zone is bounded by Hays Boulevard, Sperling Drive and Jouett Creek Drive. He noted that there is an existing pond located within the EAR-2 zone that is adjacent to the CC zone. The majority of the pond is located on Unit 8, but there is a small portion that is located on the completed Unit 7 development, along Sugarbush Trail. He said that Sugarbush Trail has 22 residential lots proposed to be developed on this plan, and these lots are required to have a minimum frontage of 40 feet, a minimum depth of 100 feet (i.e. a minimum lot size of 4,000 square feet).

Mr. Sallee stated that the current development plan requested for this land proposes 336 apartment units that will be placed in twelve buildings throughout the subject site. He said that at the southeast corner of the EAR-2 zone, residential lots are being proposed along Sperling Drive. These residential units will abut one of the twelve apartment buildings being proposed. He then said that the CC zone is proposing two apartment buildings that will contain a total of 56 apartments. These two buildings will have the same shape, size and orientation as the other apartment units throughout the development. Overall, the EAR-2 area of the Gess Property has 1,244 residential dwelling units currently approved for development or already completed. The addition of 309 apartment units being proposed in the EAR-2 portion would yield an overall density of 3.89 dwelling unit per gross acre.

Mr. Sallee directed the Commission's attention to two aerial photographs, and noted that the first photograph shows the location of Hays Boulevard, Sperling Drive and Jouett Creek Drive. He pointed out the location of the existing pond, the area where the proposed development is to be constructed, and the location of the future elementary school. He also noted the location of the single family homes that abut Sperling Drive, as well as the duplexes that are directly across Hays Boulevard. The second photograph shows the progress of the residential development on the Gess Property.

Mr. Sallee then directed the Commission's attention to a rendered zoning map for the area, and noted the location of the greenspace, greenways, open space and the significant treed areas throughout the Gess development. He also noted that there will be two private entrances into the subject property, one at the intersection of Jouett Creek and Sperling Drive and the other at the intersection of Sperling Drive and Willman Way. He said that this development will have two public street accesses: one on Hays Boulevard opposite the duplex development and the other off Sperling Drive.

Mr. Sallee said that as part of the Expansion Area Master Plan, the Special Design Area (SDA) was established to help preserve and designate open space areas throughout this 5,400 acres of land. Walnut Hill-Chilesburg Road was categorized as one of these areas. In reviewing the original zoning development plan, the SDA boundary was noted; and it was determined that the Commission should have the flexibility in relocating this boundary when reviewing development plans. He said that over time the Special Design Area boundary has moved from its original location. He said that there is a requirement for 60 percent of the development within the Special Design Area to be preserved as common open space, which this proposal has met. He then said that the surrounding Gess development has also met this requirement. The only area not accounted for in the 60 percent open space is the 15 acres of land currently owned by the Fayette County Public Schools. He said that under Article 23 of the Zoning Ordinance, the developer must maintain the Special Design Area and not reduce the size of it.

* - Denotes date by which Commission must either approve or disapprove plan.

Mr. Sallee stated that Sugarbush Trail is the only new public street being proposed for this development, noting that the other streets within the area are existing. He said that even though Sperling Drive is part of the apartment complex, it will be completed and will connect with Hays Boulevard. He then said that there will be sidewalks constructed throughout the apartment complex where they do not exist. There are existing sidewalks along Sperling Drive and Jouett Creek Drive; and it is anticipated that, as the property develops, the sidewalks will eventually connect. He said that it is expected that the sidewalks will be developed ahead of the trail system through the greenway area.

Mr. Sallee then stated that one of the important aspects to this development is the architectural standards that are being proposed. He said that as part of the standards, 50 percent of the facade must be brick, stone or veneer and the number of windows must range between 6 to 9 percent of each elevation. In addition, there can be no hip or gable roofs; and the lighting must be directed downwards and shielded from the adjacent single family areas.

Mr. Sallee said that the site landscaping for this development was initially an issue with the staff. Referring to a concept development plan exhibit that was associated with the original zone change, he said that the original concept of this development was for different areas of multi-family development, townhouse development, a community center and a large portion was to be a single family residential area. The only development not shown on this exhibit is the adjacent elementary school. He said that at the zone change hearing, there were Community Design standards set in place noting that special landscape and treatments would be provided for the entrance along Sperling Drive, as well as the entrance at Sperling Drive and Jouett Creek Drive.

Mr. Sallee stated that, with regard to the EAMP Compliance Report, it was not as detailed as usual, since most of the infrastructure for Hays Boulevard, Sperling Drive and Jouett Creek Drive has been constructed and completed. He noted that the detention and stormwater basin is in place as well.

As for the floodplain area, Mr. Sallee said that it is being proposed to narrow in size to accommodate the development. He then said that a Conditional Letter of Map Revision (CLOMR) has been received and was approved by FEMA. The CLOMR outlines conditions that the developer must follow when developing the four apartment buildings near or within the floodplain area.

Mr. Sallee said that, with regards to the EAMP Compliance Statement, this development fulfills its requirements with the future land use, community design, and the infrastructure elements of the Expansion Area Master Plan, for the following reasons (listed in the staff report):

1. The proposed residential development will enable the Gess Property to meet the definition of the EAR-2 Residential land use category in the EAMP, as development of 3-6 dwelling units per gross acre.
2. Hays Boulevard and the sanitary sewer transmission lines have been constructed in this area. Major elements of the required regional stormwater management plan have been constructed in the area. The remaining elements of that plan are proposed on this portion of the Gess Property, in conformance with the EAMP.
3. The plan is in compliance with the Community Design Element of the EAMP, given the orientation of the development to the greenways, provision of open space, massing and spacing of buildings and landscaping necessary between single family and multi-family residential land uses.

Mr. Sallee said that a revised final development plan was submitted on November 9, 2010, that addressed several issues discussed at the last (November 4th) Subdivision Committee meeting. Following the review of this revised submission, the staff would propose the revised listing of conditions for approval of this development plan.

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection and canopy information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of new access details and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection locations.
11. Provide landscaping details of tree and shrub plantings between apartments and single family lots on plan, per to implement Article 23A-2(r).
12. Complete sidewalk connections between apartment buildings in "open space" area.
13. Clarify tree preservation proposed within identified Greenway areas.
14. Clarify open space preservation in previously labeled northern "park" area.
15. Relocate apartment buildings #1 & 3 a minimum of 20' from the Athens-Chilesburg School property.
16. Denote lighting restrictions for buildings and parking lots in multi family areas.
17. Denote that building heights will comply with Article 23A-6(g) of the Zoning Ordinance.
18. Identify construction access point(s) off Sperling Drive.
19. List exactions due at time of building permit (on this plan).
20. Detail the landscaping proposed on Sperling Drive entrances (per ZDP Design Standards).

* - Denotes date by which Commission must either approve or disapprove plan.

21. ~~Delete the note reference to a proposed construction access off Jouett Creek Drive.~~
 22. Revise Note #19, deleting the word "conditional" and changing "approved" to "effective."

In conclusion, Mr. Sallee said that the staff finds that this request is in compliance with the Expansion Area Master Plan and the Zoning Ordinance provisions for future CC and EAR-2 land use.

Planning Commission Questions – Mr. Owens asked if the private drive proposed off Sperling Drive is to have access to Hays Boulevard. Mr. Sallee replied affirmatively, and said that the roadway proposed its intersection Jouett Creek Drive will be built through the subject site, and will connect to Hays Boulevard near the entrance to the duplex development. Mr. Owens asked for clarification to the rendered zoning map presented. Mr. Sallee reoriented the Commission to the local street system, and gave a brief synopsis of the proposed layout of the development. Mr. Owens asked if the remaining Gess Property has been built out. Mr. Sallee referenced the zoning map, and illustrated the boundary of the Gess Property, identified the southern area that is under development, and said that a western area of the Gess Property has not yet begun to develop.

Petitioner's Representation – Ms. Rena Wiseman, attorney, was present, along with Ray Ball and Howard Cruse, Ball Homes; Rory Kahly, EA Partners and Phil Stuppard, original designer of the overall Gess Property. She noted that this development is in the Expansion Area, and submitted the required documentation regarding the posting of the notice sign, and an affidavit stating that the sign had been posted prior to this hearing.

Ms. Wiseman asked that the Commission keep in mind the context of this development plan. This request is only 37 acres out of 5,400 acres of land that was brought into the Urban Service Area in 1996, as part of the adoption of the Expansion Area Master Plan. She said that there was an intense battle, at that time, as to whether or not the Urban Service Area should be expanded, which ultimately resulted in the adoption of the Expansion Area Master Plan that is still being noted in the current Comprehensive Plan. She then said that the overall design of this area has not changed since 1999. This design was done to use the land efficiently by reducing the pressure on the Rural Service Area, while demands were being made to expand the Urban Service Area. She said that this was a way to design neighborhoods that allowed a mixture of uses, different housing types and density. She then said that Unit 8 completes the overall vision for this area. Ms. Wiseman said that in order to appreciate this request, the overall development must be reviewed. She said that this development is consistent with what was proposed in the beginning.

Ms. Wiseman stated that there are several reasons as to why the Commission should approve this request. She noted that this plan meets all legal requirements per the Zoning Ordinance and the Land Subdivision Regulations, that this plan is in compliance with the Expansion Area Master Plan, and the infrastructure for this area is completed. She said that there is no reason for this request to be denied or modified in any significant way. She then said that to continue to develop the Expansion Area the way it was envisioned, and to preserve the Urban Service Area, different types of uses must be allowed. Ms. Wiseman said that there are apartment being proposed on Unit 8, and this had always been designated for the multi-family component for this development. She noted that the prior to the Fayette County Schools obtaining the 15 acres of land, this area was also proposed for multi-family, but with that change the development had lost density.

Ms. Wiseman directed the Commission's attention to the certified 1999 (preliminary) development plan for the Gess Property. She said that the plan that was approved by the Commission in 1999 is the same plan that is being implemented, with some minor adjustments. She then directed the Commission's attention the overall Gess Property, noting the lots that have either been approved by the Planning Commission through a final record plat or preliminary subdivision plan. In comparing the two renderings, the original proposal of the Gess Property and the ongoing development of the Gess Property are the same. She said that Unit 8 is the last section of the Gess property to be developed, and is the only portion that would allow the multi-family development.

Ms. Wiseman stated that the one item that was identified in the EAMP was system improvements to the infrastructure that will serve the entire area. She said that the idea in 1999 was not to have existing property owners within the Expansion Area fund the improvements for the expanded area; therefore, the new property owners would pay the cost, which is how the exaction fees came about. She said that the infrastructure system in this area was built by Ball Homes using the exaction fee formulated by the LFUCG. The exaction fee allowed the infrastructure and improvements to be completed, noting that Hays Boulevard was part of these improvements.

Ms. Wiseman then stated that the greenways in this area have been set aside and are being developed as originally proposed. She said that out of the 502 acres, there are 195 acres set aside for openspace and greenway area.

Ms. Wiseman said that the staff is recommending approval of this request and they have found it to be in compliance with the Expansion Area Master Plan. She said that the mix of land uses being proposed for the EAR-2 zone is permitted and what governs it is the density. She then said that the EAMP or the Comprehensive Plan states that "this plan frees developers from traditional zoning restrictions, which tends to produce monotonous subdivisions or housing type density in size that is similar, resulting in neighborhoods lacking in social, cultural or economic diversity."

* - Denotes date by which Commission must either approve or disapprove plan.

Ms. Wiseman concluded by saying that their Unit 8 development plan is in compliance with the allowable restrictions of the EAR-2 zone. She said that they are proposing multi-family and single family units, and they are within the range of density allowed through the conditional zoning restrictions. She then said that they are within the height restrictions and the floor area ratio that was established. They are complying with the Special Design Area regarding the 60 percent open space requirements. She said that they have addressed several issues that were noted by the Fire Department regarding parking and circulation, and the infrastructure has been completed to serve this area. She said that this proposal may or may not be ideal, but it does meet the requirements. She then said that this proposal carries out the spirit of what was intended by the Expansion Area Master Plan, which is the context of how this proposal should be viewed. She said that in order to preserve the rural area, the land must be used efficiently. She noted that they were in agreement with the staff's recommendation and requested approval of DP 2010-15, subject to the revised conditions set forth by the staff. They also accepted the staff findings noted in the EAMP Compliance Report. Ms. Wiseman concluded her presentation by requesting the opportunity to rebut any testimony made from this time forward.

Planning Commission Questions – Mr. Owens asked about the ratio between single family area and multi-family area. Ms. Wiseman said that on the western side of Hays Boulevard are single family-detached units, and the on the western side of Chilesburg Road are duplexes.

Ms. Roche-Phillips asked for clarification regarding the semi-public and/or commercial uses being proposed for the Transition Area (TA) and the Community Center (CC) areas. In response, Ms. Wiseman said that the semi-public uses will be part of the multi-family area due to Fayette County Public Schools obtaining the 15 acres of land. She then said that initially there was concern from the neighborhood about the types of uses that may be proposed for the CC area. At this time there are no pending plans; and if a proposal should come in, the Commission will review the plan. Ms. Roche-Phillips then asked how many acres are in the CC area. Ms. Wiseman said that there are 10.75 acres in total, and 6.0 acres will be used.

Audience Comments – The Chair gave a brief description of the procedure for remainder of this hearing. She noted that each citizen would be given the opportunity to speak and voice their concerns, whether in support or in opposition. She then noted that each person would be allowed 3 minutes to speak, following their lead presenter, unless given additional time from another person that is present. She said that if one person would be representing many, to please make that clear.

The Chair asked if anyone in the audience wished to speak in favor of this request. There was no response. The Chair then asked if anyone in the audience wished to speak in objection to this request.

Lori Pasquariello, residing at 1117 Jouett Creek Drive, was present. She noted that she was there representing many of the neighborhood residents that signed the petition. She read the following excerpt from the signed petition:

"We, the undersigned residents of the Chilesburg community, call on the Planning Commission of the city of Lexington KY to deny Ball Homes' current plan for "Gess 8" until revisions reflect community-building, "secured by design" commercial and residential properties which match the quality and design of the surrounding neighborhood."

Ms. Pasquariello noted that there are 246 neighbors who had signed the petition and made additional comments regarding this request, as well as letters that had not been received by the staff. (A copy of the petition and the additional letters are attached as an appendix to these minutes). She then said that she had been involved with this task after many of the residents within the community became upset with the proposal, noting that she had spoken with members of the Planning Staff, as well as Ball Homes representatives through several email correspondence. (Copies of the email correspondence is attached as an appendix to these minutes).

Ms. Pasquariello requested that the Planning Commission deny this proposal for several reasons. She said that there have been several unsuccessful attempts to alter the plan. She said that the builders had told her that certain revisions being requested were "doable," but those revisions never made it to the final version. She then said that this item was postponed by a representative of Ball Homes for 7 months, but no changes were made to the plan. She noted that throughout this process, she had attended the Technical Committee and Subdivision Committee meetings. She had met with a representative of Ball Homes, and members of the Planning Services staff, as well as had numerous email correspondences and phone conversations back and forth on this matter. The Planning Commission is the neighborhood's last chance to have this issue resolved. Ms. Pasquariello said that this has been a learning process, and what disturbs her most is that everyone who is involved in this proposal is either a city employee or has been appointed by the city. The neighborhood has no representation unless the Urban County Council becomes involved. She asked that the Planning Commission view themselves as a members of their community and ask themselves how they would feel about this development.

Ms. Pasquariello stated that the history of this plan started in 1999 with the "Jensen Plan," which is an alternative plan for the Gess Property, Unit 8. She said that when this development was first proposed, certain features were mentioned, but were never brought forward. It was noted that the natural features, such as wetlands and trees, would remain; but those have been lost. There are no parks or play areas being proposed because all the useable

* - Denotes date by which Commission must either approve or disapprove plan.

land is being developed. She said that if the land is not buildable (i.e. wetlands), then it is called open space or greenspace. There are no recreational facilities, community centers, outdoor areas, churches or libraries being proposed. She said that there are no protection measures for the ponds and streams because those areas have been bulldozed. The active and passive recreation areas are nonexistent.

Ms. Pasquariello then stated that this plan could be designed better to achieve both the letter and the spirit of the law and to hold a higher standard than what is written. She said that this development needs to create a community for the residents of the area and for the tenants of the apartments. She then said that they are not opposed to apartment communities, but they are opposed to "cookie cutter" apartment buildings. The apartments need to be designed unlike any other apartment communities in Lexington. She said that they want to build a relationship with their neighborhood; and to achieve this, community areas are needed. Ms. Pasquariello said that they were misled by a satellite entity of Ball Homes. The representative had told her one thing, but she later found out that high density was being proposed from the beginning.

Ms. Pasquariello said that apartment communities either have tenants who only stay for a short period of time, or have tenants who plan on living there long term. She believes that this type of apartment community will result in transient people that will not have ties to the community and will move on. She then said that they believe in being good stewards of the environment.

In conclusion, Ms. Pasquariello requested that the Planning Commission deny this request.

Brian King, residing at 4660 Honeycomb Trail, was present. He noted that he was also speaking on behalf of Glenn Cain, who resides at 1109 Banyan Cove. He said that the resident's overall concern is the safety and the security of the community for their children. He then said that this community is a great place to raise a family, and it is part of the American dream; but crime prevention is a major concern.

Mr. King then said that they had spoken with a representative of "Secure by Design" regarding this community and how to prevent crime through environmental design. He noted that the low elevation area (floodplain area) between the apartment clusters will create loitering and undesirable activities. He said that the greenways and walkways are hidden by trees, which will also create unseen and undesirable activity. He then said that there is no mention of how these undesirable activities will be prevented through lighting of the landscaping.

Mr. King then said that the apartment buildings that will be built on a higher elevation will prevent the line of sight of the neighborhood. He noted that the apartment buildings are 35' in height; and when placed on a higher elevated area, these buildings will block the view of the neighborhood. He said that the Division of Police has a significant concern with this type of design. There are several design elements to this apartment complex that pose a security risk, such as the access points, breezeways and the layout of the buildings. He noted that there are apartment buildings that back up to within 20' from the single family lots.

Mr. King directed the Commission's attention to an aerial view of the property, and said that there are at least two apartment buildings 20' from the proposed school. He said that the community does not want to introduce an unwanted environment, such as the children walking through the apartment complex or the tenants being so close to the school. He said that the design elements of this proposal need to be worked on. He said that they are not against apartments, but they are against the design of the development. He believes that townhomes or condos would be more appropriate.

Mr. King said that the need for an apartment complex within this area is not there. He said that, in researching this area, there are 70 apartment complexes with an average of 10 percent vacancy rate. He then said that there is not a need for these apartments, especially when there are no amenities, such as a convenience store within walking distance.

In conclusion, Mr. King requested that the Commission disapprove this request until a better design is proposed.

Anetha Sanford, residing at 4525 Arum Park, was present. She said that their first concern is the safety and security of this area. She said that, in speaking with a friend, it took almost a year to resell their house due to it being near an apartment complex. She then said that her friend had said they had moved to this area because it was their understanding this would be a community-based area.

Ms. Sanford said that they enjoy this area, as well as the resident. She noted that she is not opposed to apartments, but this area needs to be a community-based development for people who want to make an investment. She concluded by saying that prior to her purchasing her house, her family lived in a Section 8 housing development. She does not want this area to become a Section 8 development.

Carol McKee, residing at 813 Chilesburg Court, was present representing the Chilesburg Court Neighborhood Association. She noted that she was also speaking on behalf of Waverline Crockett, who resides at 853 Chilesburg Court. She said that she has been involved in the development of this area for years. Even though her neighborhood is not part of the Gess Property, her neighborhood will be impacted from this proposal. She said that the proposed

* - Denotes date by which Commission must either approve or disapprove plan.

development poses safety hazards, and it endangers the lives of the people within community. She said that this multi-level apartment complex will increase the flow of traffic on Hays Boulevard tremendously. She then said that the proposed new entrance to the apartment is too close to the school, and to the intersection of Hays Boulevard intersection. She noted that traffic to and from the school will need to use the intersection of Hays Boulevard and Jouett Creek Drive to gain access to the school. She said that the traffic on Hays Boulevard already backs up in the morning and the afternoon. She then said that the addition of the 280 apartment units will increase the traffic impact for this area. The safety of the resident and the children will be jeopardized.

Ms. McKee stated that a decrease in property values is another concern for the community. She is not opposed to apartments, but the proposed location of the apartments is troublesome. She appreciated that Ball Homes is creating this attractive community, but this proposed apartment development does not serve the best interest of the community. She said that the appropriate future development for this area should be single family homes. She then said that this proposed plan primarily benefits Ball Homes, not the residents of the community, the surrounding neighborhoods or the students at Athens-Chilesburg Elementary School.

Ms. McKee said that as Commission members appointed to represent Fayette County, she requested that they make an informed and wise decision to oppose this development. She added that duplexes have been mentioned several times throughout the hearing, and noted that these structures are condominiums. She then added that the location of the school has been incorrectly depicted on the rendering, and noted that the school is located at the corner of Jouett Creek Drive and Hays Boulevard. In conclusion, Ms. McKee said that, in the 1990s, several residents had met with Mr. Ball. At that time, he told them that the apartments were being proposed for the rear of the Gess Property.

Darrell Sebastian, residing at 817 Chilesburg Court, was present. He noted that he is in opposition to the current development, due to the flooding issues on Chilesburg Road. He said that the retention pond on the Gess property was mentioned by the staff; but the retention pond across Chilesburg Road is inadequate, resulting in Chilesburg Road flooding several times. Adding more impervious surfaces to this area will only increase the flooding issue. Mr. Sebastian said that the traffic in this area is already backing up; and adding an access off Hays Boulevard will create a hazard to the school children, as well as to vehicular traffic. In conclusion, Mr. Sebastian requested that this item be postponed.

Clay Morton, residing at 4159 Star Rush Place, was present. He said that his family moved to the Chilesburg area for the community and family atmosphere. He said that Ball Homes is proposing to build the apartments directly behind his house. He said that this will not promote the family and community atmosphere that was promoted with the development.

Mr. Morton said that the Milestone realtor said that Ball Homes does not try to negatively impact a community, but these apartments will create that negative impact. He then said that the community believes this to be true, as well. This will decrease the property values in the area, and it does not maintain a safe environment. This development has many negative impacts, and he hopes that the Commission listens to the citizens and not allow it to move forward. In reference to a question from Mr. Owens, he said that the area surrounding the proposed development is single family residential units. The proposal for the apartment units was submitted last, which seems to be backwards.

Beverly Turner, residing at 1117 Jouett Creek Drive, was present. She noted that she was also speaking on behalf of Sandi Baldrige, who resides at 776 Maidencane Drive, as well as another resident. She said that she is concerned with the separation of the apartment community from the rest of the community. She then said that the community wants to be able to walk down the street, perhaps to a library or a restaurant. She noted that the layout of the buildings has the rear entrance facing the neighborhood. If the apartments have a separate neighborhood association then they are not part of the neighborhood. She said that 2/3 of the apartment units are upstairs, which means that transient people will be the residents of the complex. She then said that transient people do not want to part of a community and tend to move very quickly. The vacancy rate of apartment complexes is high in most areas. This apartment complex offers no amenities, such as restaurants, employment within the area or access to the interstate. She said that there are no retail, medical or commercial uses in the area, only residential. This is not a place for transient people to live. She said that a lot of apartment complexes are for people who move in then perhaps purchase a house in an area such as theirs.

Ms. Turner said that she agrees with the density issues as long as there is not "sprawl." She likes the small lots and narrow road, as long as the traffic does not increase. She believed that the Commission is charged with planning for the communities in Lexington, not just for the downtown area or preserving the horse farms, but for the residents of Lexington. She said that the growth of the city and the subdivision should be taken into account. She then said that the proposed development plan has used up all available space with apartment buildings. What is left in the development is swamp land and ditches. She said that there is no dry flat area that could be used for sports activities, unless it is a parking lot.

Ms. Turner stated that apartments are fine; they want people who will stay in the community and who want to be in the community. She said that they do not want this to be a stepping stone for people who will move to something better. She then said that they want a community that is very diverse, with different uses such as the Old Village in

* - Denotes date by which Commission must either approve or disapprove plan.

Virginia. This proposal does not offer amenities, such as a tennis court, or weight room, and the pool area is very small. There is nothing to offer people who may want to be long-term residents of the area. She said that the clubhouse and pool area should be able to accommodate a swim team and recreational features, or semi-public uses.

Ms. Turner then stated that it was mentioned earlier that the Commission is legally required to approve this proposal. She does not believe this to be true, and the Commission's advisors would state that fact. The vision for the City of Lexington is important. They want the apartment complexes to be integrated into the subdivision, the subdivision integrated into the Chilesburg area, and the Chilesburg area integrated into the City of Lexington. She believes Lexington to be a special place to live and it takes hard work to maintain it. She indicated that keeping Lexington special is not about approving poorly designed plans.

Czirr Gabriel, residing at 4136 Sperling Drive, was present. He noted that his property is directly across from the apartment buildings that back up to the single family residential area. He said that over the last few months the traffic has increased in the area around Jouett Creek Drive. He then said that there is a concern for his family and for the adverse impact the apartment buildings will have. If they had known there would be apartment buildings in this area, they would have purchased their home at another location. Mr. Gabriel concluded by requesting the Commission to take this matter into consideration and deny the proposal.

Marian McGuire, residing at 4046 Boone's Creek Road, was present. She thanked the Commission, Mr. Ball and the Planning staff for taking time in hearing this matter. She noted that she was also speaking on behalf of another audience member. She submitted several photographs to the Commission of the surrounding vegetation.

Ms. McGuire expressed her concern with the currently proposed development plan for the Gess Property, Unit 8, regarding the environmental changes in the area. She submitted a series of photographs to the Commission and gave a brief description of each.

Ms. McGuire said that the construction and design in the floodplains and wetlands, as well as the deforestation of the land is unnerving. When reviewing the aerial photographs of the area, with an overlay of the proposed development plan, there are many existing tree stands that will be destroyed. She noted that an existing tree nursery has already been destroyed, and the existing wetland areas have been filled and graded.

Ms. McGuire then illustrated an aerial photograph with an overlay of the proposed school and apartment building to demonstrate the close proximity of the two buildings from each other.

Ms. McGuire directed the Commission's attention to the aerial photograph showing the stream near Hays Boulevard, and said that there is a concern with this area becoming increasingly flooded. She then said that even though there is a drought in this area, the land still holds excess water. If the infrastructure is not constructed correctly, it will become a flood area.

Ms. McGuire said that the Chilesburg area could create an earth friendly neighborhood through the greenspace area. She then said that there is material on site that could be recycled and re-used through grant money, such as the barn. The school property could offer an educational aid for teachers and students by providing an agricultural program. She said that the tree stands should remain because if the natural flow of water is disturbed, it may produce flooding when development occurs in an existing floodplain area. She then said that when a floodplain area is filled and graded, it further exacerbates the problem. The existing flow of the land should not be disturbed.

In conclusion, Ms. McGuire asked Mr. Ball to be a leader, not a follower, by creating a permaculture development. She then asked the Planning Commission to deny this proposal and send the developer back to the drawing board. She believed that Ball Homes can create a better proposal for this land.

Petitioner's Rebuttal Comments - Ms. Wiseman said that the overall comments made are in opposition to an apartment community. She then said that the audience members had noted that apartments are not safe, not family oriented, and that property values will decrease. They also noted that apartments are dangerous to children and should not be near a school. She said that it was mentioned that apartments will have transient people living there and these people will not be part of the community. She then said that the audience members keep saying they are not against apartments; but from the testimony given, their statements say they are against it. Ms. Wiseman said that these are statements that are often heard when apartments are proposed near a single family residential area. She then said that the Expansion Area Master Plan was adopted to help avoid the tug of war on what should or should not be built in this area. She noted that the Comprehensive Plan had revalidated the Expansion Area Master Plan when it was adopted. She said that the EAMP has been in the works from the beginning, and it has been followed. She then said that there have been proposals to veer away from the original plan, but the Commission kept to what was and has been adopted. Ms. Wiseman said that if the Planning Commission denies this development, it will be a direct violation of the EAMP. She said that the audience does not believe the apartments will be a community, but everyone has their own definition of what makes a community. She then said that the developer is following the Commission's guidelines through the Zoning Ordinance, the Land Subdivision Regulations and the land use plan. The Commission, who represents the community, had stated this is what should be developed in this area.

* - Denotes date by which Commission must either approve or disapprove plan.

Ms. Wiseman said that she does not know what the realtor told the property owners, but there was no proposal of these apartments being in the rear portion of the development. She said that the multi-family component had always been envisioned for this area. This can be a community; there are walkways, trails and greenways. She said that the greenways will be maintained by the government. She then said that there will be activity on the bike and walking trails. There is a trail leading to the Kentucky Horse Park. Ms. Wiseman said that, as for the apartments, the front looks just like the back. She then said that there was testimony given saying the children are at risk with apartments being next to the school. Mr. Ball has sold that land to Fayette County Public Schools and they were fully aware of the future proposal. She said that there was no representation of the Transition Area having a library, a church and so forth. These uses, as well as multi-family, are allowed in the TA zone, but no one showed any interest in building a library or a church. With regard to the Jensen plan previously mentioned, she said that they are complying with those guidelines. She then said that there is sections noting what uses are allowed in the TA zone, but there was never a promise of a library in this area. Ms. Wiseman stated that there is an area for a small community center, and at the time it is proposed, it will come before the Commission. There was a lot of time dedicated to developing the Expansion Area Master Plan.

In conclusion, Ms. Wiseman said that a comment had been made that no one was present in favor of this proposal. She said that if the members, who sat on the Commission in 1999, were to listen to that same reasoning, then these folks in the audience would not have a place to live. She said that Ms. McKee had presented a petition, at that time, with 400 residents in the Todds Road area who were in opposition to the entire Gess development. She then said that that petition had noted the same issues as today, and the development of the Gess property is not safe for the well being of the residents in that area. She said that this proposal will not pose a threat to the community, it is a good plan and it will provide all the amenities to go along with a nice apartment complex. She then said that this proposal meets the requirements of the EAMP and requested approval.

Objectors' Rebuttal Comments - Ms. Pasquariello said that there are no details as to what uses will be proposed, and they still hold firm that there are plenty of apartment vacancies in Lexington. She said that there are examples of apartment communities in Lexington that were nice at first, then over time became dangerous areas; for example, the Gainesway apartment community nears the Bates Creek School property. She said that the property at the corner of Richmond Road and New Circle Road is another example of an apartment community failing. They do not see the need for another apartment complex when the land could be used for open space. She has a problem with being misled by the realtor as to where the apartment complex would be built. She asked, why apartments are beautiful and welcoming, they are the last to be built. In conclusion, Ms. Pasquariello requested the Commission to deny this request.

Mr. King said that they were told in the Home Owners Association meeting that the residents of this area would not be able to use the apartment amenities, such as the pool area or clubhouse. He said that the apartments will be a private, separate community. He agreed that they were misled by Milestone Realty, who is a representative of Ball Homes. He noted that several property owners had asked the realtor, specifically, as to what was proposed for this area, and this proposal was never mentioned.

Ms. McGuire said that she is opposed to the number of apartments is being proposed. She then said that the buildings adjacent to the school could be removed to provide greenspace for the community, as well as used for educational purposes.

Ms. Turner said that they are not opposed to apartments, but they are opposed to the number of apartments being proposed for this area. In reference to the Community Center, she noted that there was interest in providing a gas station at this location at some point in the future. The Chair informed Ms. Turner that the Community Center area has been taken off the docket. Ms. Turner said that the area next to the Community Center has an area that is a wetland, and greenspace poses a safety issue.

Staff Rebuttal Comments - Mr. Sallee said that Ms. Wiseman noted earlier that the proposed development plan is in agreement with the provisions of the EAMP. He then said that this is the case, and it is reflected on both the EAMP Compliance Report and the staff's recommendations.

Planning Commission Questions – Mr. Owens said that the private drive was mentioned throughout the hearing, and asked if the residents will have access to this drive, and to the trails inside the complex. Mr. Sallee answered that the drive is considered private because it is not to be a public street; and as for the trails on this site, usually in other areas, the trails are open for public use. Mr. Owens then asked about the status of the tree canopy. Mr. Sallee said that condition number 5 ("Urban Forester's approval of tree protection and canopy information") is listed as a sign-off in the list of recommendations. He said that the proposed development plan does note the tree protection and tree canopy areas.

Mr. Owens asked what type of apartments these will be (i.e., the cost, the size and so forth). Ms. Wiseman said that these apartments will range between one and three bedroom units, with the rent ranging from \$700 dollars and up. She said that there will be limits as to how many tenants will be allowed in a single unit, and there will be parking restrictions based on the same number of people for that unit. Mr. Owens then asked if the apartment complex will

* - Denotes date by which Commission must either approve or disapprove plan.

have their own Home Owners Association separate from the surrounding community. Ms. Wiseman said that the open space areas will be maintained by the apartment complex, and will not be paid for by the community. She said that there is an overall home owners' association for the Chilesburg area, and within that area there are individual home owner's associations. Mr. Owens asked if there will be public access to the parks, greenways and so forth. Ms. Wiseman said that these greenways will be deeded or dedicated to the LFUCG. She then said that the greenways will be linked to other greenways within the Gess Community.

Ms. Roche-Phillips asked if there is a traffic impact study required for this area. Mr. Sallee said that there is not, due to this not being associated with a zone change.

Ms. Copeland asked if the rendering previously shown had single family lots in the proposed area of development. Mr. Sallee said that the previous rendering had shown single family lots on portions of the Gess Property, but not in the proposed Unit 8 area. Ms. Wiseman noted that this area had never had single family lots proposed.

Ms. Copeland asked if the home owners in the area ever met with Mr. Ball and why there was no communication between the two. Ms. Pasquariello said that she had met with the Planning staff and Mr. Cruse a few times throughout this process; and from what she had heard, the outcome was positive. She then said that they had made suggestions to the developer as to what could be placed on the site, and they indicated that those changes were "doable." Throughout the entire time, this request was continually postponed and the plan had no major changes. She believed, from what she was told, the meetings were positive, but the end result showed that there were no differences made on the plan.

Ms. Copeland then asked if there is a home owners' association. Ms. Pasquariello replied that there is a home owners' association; however, it is handled through Ball Homes, and that the community will not have control of it until the year 2013. She then said that to sit on the home owners' association, a person must apply and be chosen by Ball Homes. In response to Ms. Pasquariello comments, Ms. Wiseman said that they had met with the community and it was not doable to eliminate 5 apartment buildings for a park. She then said that there was a meeting where Council Member Crosbie, Mr. Ball and many of the audience members were present; and at that meeting it was agreed upon that any development in the Community Center would be removed. She then said that the area near Ms. Pasquariello's home previously had townhomes proposed; but she had had objection to that proposal, so the townhomes were removed and replaced with single family homes. Ms. McGuire noted that her home owners' association is separate from the Ball Homes development. She said that they had met with Mr. Ball, and at that time, they were told the apartment buildings would be to the rear of the property.

Mr. Brewer said that the regulations allow this proposal to move forward, and the Commission's hands are somewhat tied as to what decision could be made. He then said that he appreciate the comments made, and the fact that the neighborhood wants this development to be held to higher standards than what is required. However, the regulations for a particular zone denote what can and can not be done. This proposed development in compliance. He said that he understood the neighborhood's concerns, but those concerns are addressed through the list of recommendations from the different government entities. Mr. Brewer said that this plan has not changed since it was first proposed for this area, and he could not understand how this could be new to the community. He then said that if the realtor had told the home owners anything different, they were dishonest. He noted that as for the security issue, Mr. Paulsen is involved with the Secure by Design initiatives and would be aware of potential security issues.

Mr. Cravens said that there is a similar project in the Glassford community, and asked if the property values in that area have decreased with the apartment buildings being constructed. Ms. Wiseman said that in terms of the sales of the homes, it is the best area, even with the apartments. Mr. Cravens then asked if there is a high crime rate. Ms. Wiseman said that she is unsure. Mr. Cravens said that when developing an area, there is a certain number of units that predicated the cost and the amount of yield that is determined. He asked if the apartments were not proposed, if the community would have to pay for the cost of the land with the cost of their home. Ms. Wiseman replied affirmatively, and said that they would still be required to pay the exaction fees, depending on the density of the area. Mr. Cravens then asked if this will be in Ball Homes' rental management. Ms. Wiseman replied affirmatively.

Mr. Owens said that, on paper, this development is in compliance with the regulations. He then said that the neighborhood is against this development, which concerns him. It appears that this development has been planned this way from the beginning. He said that, in reviewing the email correspondence between Ms. Pasquariello and Mr. Cruse, the concerns are valid; but what concerns him is the email from Mr. Kruse that stated: *"in my mind your biggest concern is having single family homes versus townhomes across the street from you. As I said then, and still contend, this is doable."* Mr. Owens said that he understood the concerns of the neighbors, but at this point he was unsure what he would do regarding this proposal.

Mr. Cravens said that due to the current economy, many homeowners have become renters. He said that there will be more rental properties being built because people can not purchase a home. These are upscale apartments, and they will be a needed by the community. He said that the people who spoke during the hearing said that they were not opposed to apartments, but they are present in opposition to the apartments. He then said that he believes the community's fear is far worse than what happens in reality.

* - Denotes date by which Commission must either approve or disapprove plan.

Mr. Paulsen said that he is head of Secure by Design, and there is only one other person who is with the organization. He asked Mr. King to whom he had spoken because it was not them. He then said that from a Secure by Design standpoint, this development is doable. He then said that Secure by Design is a voluntary program that works with the developers rather than forcing them into something. This development could be certified by Secure by Design, but at this point in time there is not enough information to give a valid opinion. He said that there are eight elements to a Secure by Design development, and this can not be determined by looking at the rendering. This would involve working with the developers. He said that it can be achieved and they have worked with Ball Homes in the past. Mr. King said that they had spoken with members of the Police Department, who live in the area, and they validated the community's concerns. He then said that there are a few elements to this development that comply with the Secure by Design standards, but there are some elements that do not. Mr. Paulsen said that he wrote the only guide to multi-family housing, and there is not enough information to say it does not comply. He said that Secure by Design does not push for one type of community. Secure by Design is an 8-part program. He said that it was stated during the hearing that people are not against apartments, but even a single family area has just as many problems as a multi-family area. There is not enough information to say this development does not comply with Secure by Design standards.

Ms. Roche-Phillips said that the Expansion Area Master Plan is a good program. She said that a school and transitional area are being proposed for this development. She then said that it is widely accepted to have a school adjacent to an apartment complex. As for the comment made during the hearing of no jobs within the area, unless the Community Center is developed, there will continue to be no jobs. The idea in 1996 for the Expansion Area was to allow the mixture of density and different land uses, which has been reaffirmed through the Comprehensive Plan. Ms. Roche-Phillips said that she is also reaffirming that decision, as this was how it was planned to be done. She then said that she was conflicted with this proposal and how to resolve some of the neighbors' concerns.

Ms. Copeland said that she understands that this development meets the legal requirements, but it does fall short on the design. She said that this design is two apartment "ghettos" inside of a residential area. It is not integrated like the Chevy Chase area. It was her belief that this could not be resolved as is because the apartment buildings are in only one area of the development.

Mr. Owens challenged Ball Homes to develop a Community Center that will be attractive to the public. This will help the community in the long run.

Ms. Roche-Phillips said that she had a concern with how this development is designed and was unsure how this could be resolved.

Mr. Cravens asked if this is a preliminary development plan. Mr. Sallee replied that it is a final development plan.

Ms. Beatty said that, even though communication between Ball Homes and the neighborhood has been ongoing, the developer believes they have made all the changes that they could possibly have. Ms. Wiseman nodded in agreement. Ms. Beatty said that she is "pro" community and she appreciates this community voicing their concerns. She encouraged the communication between Ball Homes and the neighborhood to continue in the future. She said that she likes the proposal and it is certainly within the regulations, but the communication between the two entities is questionable.

Action - A motion was made by Mr. Cravens, seconded by Ms. Beatty, and carried 8-1 (Copeland opposed; Holmes and Wilson absent) to approve DP 2010-15, subject to the revised conditions provided by staff, noting that the plan is in compliance with the EAMP for the reasons in the staff report.

Note: A recess was declared by the Chair at 4:35 p.m. and the meeting re-convened at 4:45 p.m. Ms. Roche-Phillips and Mr. Paulsen left at this time

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Cravens, seconded by Mr. Brewer, and carried 7-0 (Paulsen, Roche-Phillips, Holmes and Wilson absent) to approve the release and call of bonds as detailed in the memorandum dated November 11, 2010, from Ron St. Clair, Division of Engineering.

Note: Mr. Paulsen arrived at this time.

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, November 4, 2010, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Lynn Roche-Phillips, Ed Holmes, William Wilson and Carolyn Richardson. The Committee reviewed applications, and made recommendations on zoning items as noted.

1. **ZOTA 2010-4 & SRA 2010-3: REPEAL ARTICLE 20 OF THE ZONING ORDINANCE AND OTHER AMENDMENTS TO ADDRESS STORMWATER DISCHARGE FROM CONSTRUCTION SITES**

REQUESTED BY: Urban County Council

PROPOSED TEXT:

- A. ARTICLE 20: SOIL EROSION AND SEDIMENT CONTROL** is to be repealed in its entirety.
- B.** The following sections of the Zoning Ordinance and Land Subdivision Regulations are proposed to be amended as shown on the following table:

ZONING ORDINANCE ARTICLE:	LANGUAGE
5-2(b) (RE: Wrecking permits)	5-2(b) WRECKING PERMITS - No building or other structures shall be razed, demolished or removed, either entirely or in part; nor shall any of said activities be commenced without a wrecking permit, issued by the Division of Building Inspection, and any required grading and disturbance permit has been obtained from the Division of Engineering
5-2(c) (RE: Permits Required)	5-2(c) GRADING LAND DISTURBANCE PERMITS - Grading Land disturbance permits shall be required as provided in Article 20 Chapter 16 of the Code of Ordinances.
5-4(e) (RE: Permit Requirements)	5-4(e) GRADING LAND DISTURBANCE PERMITS - Requirements for grading land disturbance permits shall be as provided in Article 20 Chapter 16 of the Code of Ordinances.
5-7 (RE: Complaints Regarding Violations)	5-7 COMPLAINTS REGARDING VIOLATIONS - Whenever a violation of the provisions of this Zoning Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Director of the Division of Building Inspection or the Director's authorized agent or, in the case of grading land disturbance permits authorized under Article 20 Chapter 16 of the Code of Ordinances, with the Urban County Engineer or the Urban County Engineer's Director of Water Quality or the Director's authorized agent. The Director of the Division of Building Inspection, or the Urban County Engineer, or their authorized agents (as appropriate) shall record properly such complaint, immediately investigate, and take action thereon as provided by this Zoning Ordinance.
8-1(d)(22)(b) (RE: Concrete Mixing as Conditional Use in A-R zone)	b. Noise, Air & Water Quality - The facility shall be operated at all times in compliance with applicable Federal, State and local laws and regulations on noise, air, and water quality, including the LFUCG Noise Ordinance (Sections 14-70 through 14-80), Article 6-7: Stormwater Disposal Standards, and Article 20: Soil Erosion Controls Chapter 16 of the Code of Ordinances.
8-1(d)(23)(b) (RE: Asphalt Plants as Conditional Use in A-R zone)	b. Noise, Air & Water Quality - The facility shall be operated at all times in compliance with applicable Federal, State, and local laws and regulations on noise, air, and water quality, including the LFUCG Noise Ordinance (Sections 14-70 through 14-80), Article 6-7: Stormwater Disposal Standards, and Article 20: Soil Erosion Controls Chapter 16 of the Code of Ordinances.
8-22(d)(9)(b) (RE: Concrete Mixing as Conditional Use in I-1 zone)	b. Noise, Air & Water Quality - The facility shall be operated at all times in compliance with applicable Federal, State and local laws and regulations on noise, air, and water quality, including the LFUCG Noise Ordinance (Sections 14-70 through 14-80), Article 6-7: Stormwater Disposal Standards, and Article 20: Soil Erosion Controls Chapter 16 of the Code of Ordinances.
8-23(d)(4)(b) (RE: Asphalt Plants as Conditional Use in I-2 zone)	b. Noise, Air & Water Quality - The facility shall be operated at all times in compliance with applicable Federal, State, and local laws and regulations on noise, air, and water quality, including the LFUCG Noise Ordinance (Sections 14-70 through 14-80), Article 6-7: Stormwater Disposal Standards, and Article 20: Soil Erosion Controls Chapter 16 of the Code of Ordinances.
21-6(a)(14) (RE: Development Plan Requirements)	(14) A note stating that no grading, stripping, excavation, filling or other disturbance of the natural ground cover shall take place prior to approval of an erosion control plan. Such plan must be submitted in accordance with Article 20 Chapter 16 of the Code of Ordinances.
23-B (RE: Expansion Area)	23B-3 INTERIM AGRICULTURAL USES EXCEPTED - The only exception from the provisions of 23B-2 above shall be the principal permitted uses as set forth for the A-R zone in Article 8-1. Such uses, including the construction of one principal single family dwelling, shall be permitted by right, subject to the typical requirements of law contained in this Zoning Ordinance or other applicable ordinances for such construction, such as building permits, grading land disturbance permits, and the like.
26-11(1)	1) Fencing at least three (3) feet tall, clearly visible with signage posted every one

* - Denotes date by which Commission must either approve or disapprove plan.

(RE: Tree Protection During Construction)	hundred (100) feet, and lettered with three (3) inch high letters clearly identifying the TPA shall be used to surround all tree protection areas. The tree protection fencing will be placed at a distance equal to or greater than the critical root zone of the tree(s) to be protected. Any proposed TPA areas less than the minimal standards can only be delineated by approval of the Urban Forester. Written approval by the Urban Forester that the TPA requirements have been installed shall be provided to Division of Engineering prior to approval of an erosion control plan and/or the issuance of any grading-land disturbance permit or other construction activity. The fencing shall be maintained and remain standing until issuance of the Certificate of Occupancy or until the Urban Forester has determined that construction activity has ceased to the point that the fencing may be removed or that the fence may be relocated to permit final grading provided the activity will not adversely affect the health of protected tree(s).
SUBDIVISION REGULATIONS ARTICLE:	LANGUAGE
4-6(a) (RE: Construction of Public Improvements)	4-6(a) GRADING LAND DISTURBANCE PERMIT - The Division of Engineering shall issue permits in conformance with the Division's established procedure.
5-3(e) (RE: Improvement Plan Requirements)	5-3(e) SOIL EROSION CONTROL PLAN - Soil erosion control plans required in conjunction with major subdivision plans under Article 20 of the Zoning Ordinance <u>Chapter 16 of the Code of Ordinances</u> shall be considered as a part of the required improvement plan information for the purposes of these Subdivision Regulations.
6-7(f) (RE: Stormwater Disposal Standards)	6-7(f) SOIL EROSION CONTROLS - Control of erosion and sedimentation for subdivisions shall be as required under Article 20 of the Zoning Ordinance <u>Chapter 16 of the Code of Ordinances</u> and the provisions of the Division of Engineering Stormwater Manual.

The Zoning Committee Recommended: **Approval**, for the following reasons provided by staff:

The Staff Recommended: **Approval**, for the following reasons:

1. The proposed amendments to the Zoning Ordinance and the Land Subdivision Regulations will strengthen Fayette County's regulation of stormwater runoff and, ultimately, will ensure greater compliance with the Clean Water Act of 1972 and its amendments.
2. The proposed amendments are a necessary step in complying with the Consent Decree, agreed to by the U.S. Environmental Protection Agency, the Kentucky Division of Water and the Lexington-Fayette Urban County Government. The LFUCG has put forth every effort to comply with the agreement, which includes amending current regulations for stormwater discharge and implementing an effective Construction Site Stormwater Runoff Control Program.

Staff Presentation - Ms. Wade directed the Commission's attention to the staff report for ZOTA 2010-4 and SRA 2010-3, and noted that the Urban County Council had initiated this text amendment. She then said that the text amendment(s) will implement changes to the Zoning Ordinance and the Land Subdivision Regulations that are required by the recent Consent Decree.

Ms. Wade stated that the proposed changes are a direct result of the lawsuit filed against the Lexington-Fayette Urban County Government by the US Environmental Protection Agency (EPA) and the Kentucky Division of Water (DOW) for violations to the Clean Water Act of 1972. Even though the Consent Decree has yet to be sanctioned by the US District Court, the Lexington-Fayette Urban County Government has put forth every effort to comply with an agreement that they had plan to enter into with the US Environmental Protection Agency (EPA) and the Kentucky Division of Water (DOW).

Ms. Wade then stated that, as part of the agreement between the LFUCG and the EPA and DOW, a set of requirements and processes have been established for stormwater discharge from constructions sites. She said that the LFUCG has adopted a new set of regulations and those will become effective once the Urban County Council approves the proposed text amendment to Article 20 of the Zoning Ordinance. She then said that this the new regulations will become part of Chapter 16 of the Code of Ordinance.

Ms. Wade said that this proposed text amendment would repeal Article 20 of the Zoning Ordinance, which addresses erosion and sediment control measures, as well as other sections within the Zoning Ordinance and Land Subdivision Regulations. It would then reference erosion and sediment control through Chapter 16 of the Code of Ordinances. Ms. Wade then said that this text amendment would also change the standard terminology, such as "grading permit" to "land disturbance permit." She said that these proposed changes would allow improvements for the enforcement of these violations and provide more effective penalties to be placed on stormwater management. These changes would strengthen Fayette County's regulations for stormwater runoff; and ultimately, it would ensure greater compliance with the Clean Water Act of 1972, as amended, as well as complying with the Consent Decree.

Ms. Wade stated that the staff is recommending that there be one change to the text that was initiated by the Council. She said that Article 5-7 of the Zoning Ordinance relates to complaints regarding stormwater violations. At this time, that responsibility falls upon the Urban County Engineer, and this responsibility is planned to be under the Director of Water Quality.

* - Denotes date by which Commission must either approve or disapprove plan.

In conclusion, Ms. Wade said that the staff is recommending approval of this request, for the reasons provided on the staff report.

Citizen Comment – There were no citizens present to discuss this proposal.

Action - A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 8-0 (Roche-Phillips, Holmes and Wilson absent) to approve ZOTA 2010-4 & SRA 2010-3, for the reasons provided by staff.

VI. COMMISSION ITEMS - The Chairman will announce that any item a Commission member would like to present will be heard at this time.

A. BOAR 2010-1: ROBERT D. FIELDS, MD – an appeal of BOAR denial of a change to a property (using pea gravel as mulch), located in the Gratz Park Historic District at 239 North Mill Street.

Staff Presentation – Ms. Rackers stated that the appellant, Dr. Fields, who owns the property at 239 North Mill Street, is requesting an appeal of the August 11, 2010, Board of Architectural Review (BOAR) denial of a Certificate of Appropriateness for the use of pea gravel as “mulch” for nearly half of his front yard.

Ms. Rackers then stated that the subject property is zoned Two Family Residential with an Historic District Overlay (R-2/H-1). She directed the Commission’s attention to map of the overall area, and briefly oriented them to the surrounding street system. She said that the subject property is located on the northwest corner of North Mill and New Street. It fronts Gratz Park and is otherwise surrounded by residential uses.

Ms. Rackers then said that the appellant’s property is one of three residential structures in this small block of North Mill Street, all of which have similar characteristics, as they were all built around the turn of the century. Because the “sister” properties were built within the same time frame, the massing, size, building material, etc. are similar, although they are not the same. She said that in defense of his use of pea gravel, the appellant had cited the fact that these properties are not the same.

Ms. Rackers said that Dr. Fields was present at the August 11, 2010, BOAR hearing; and after the staff’s presentation, he explained to the Board the sequence of events that resulted in using the pea gravel. Dr. Fields had obtained a Certificate of Appropriateness for a pool in the rear yard of the property. At that time, he had relocated several boxwoods from the rear yard to the front yard, and lined the planting beds with brick. This left green space areas similar to pathways between the existing shrubs, which became weedy and unattractive, so Dr. Fields decided to re-sod the area in an attempt to maintain the green space. She said that when Dr. Field’s attempts had failed, the decision was made to use pea gravel, which was done without obtaining the proper permit from Historic Preservation.

Ms. Rackers noted that, at the BOAR hearing, Dr. Fields had referenced the Hunt Morgan House and their extensive use of gravel on the property. She said that even though the Hunt Morgan House is located within a residential zone, it is a commercial use. She said that the Hunt Morgan House is a historic house museum that is open to the public and is available to hold special events, such as weddings. In response to Dr. Fields’ statement at the hearing, a BOAR member had noted that the Hunt Morgan House is of a different time period. It is a different type of structure and it has a different architectural design. The Board member added that the use of boxwoods was an appropriate way to upgrade the landscaping on the property; unfortunately, the use of pea gravel was inappropriate. It was further stated that even though the “three sisters” were built within the same time period, and there are similar architectural styles, pea gravel was never used; therefore, the front yards should remain green space. The Board member also noted that because this property is part of a cohesive unit, the landscaping does not need to be the same as the others, but should follow the general pattern of the other two properties and what is historic for those properties.

Ms. Rackers stated that the Historic Preservation staff had recommended disapproval of the appellant’s request. In the staff report there were eight guidelines cited, five of which were particularly applicable, and two of which were specifically cited:

- III.6.B. Landscape, land features, land formations, view sheds and archaeology that are altered or introduced should be compatible to the site and with surrounding properties.
- III.7.B. Landscape elements and site elements: open space should only be developed in character with the site and the local historic district.

Ms. Rackers said that the findings of the Historic Preservation staff stated that the proposal to re-use and relocate the boxwoods from the rear to the front yard is within the Guidelines. However, the use of pea gravel was not appropriate due to the loss of green space. It was also noted that the amount of green space being removed would be excessive and not in keeping with the Gratz Park Historic District. At the BOAR hearing, the members discussed this proposal, and unanimously agreed with the staff’s findings for disapproval. She said that it was noted in the hearing that Dr. Fields was aware of the BOAR review process, but installed the pea gravel without proper approval or obtaining the proper permit.

Ms. Rackers then said that the staff could find no flaws in the review of the appellant’s request by either the Historic Preservation staff or the Board of Architectural Review. It is consistent with the charge of the BOAR, which is to interpret and apply the adopted design guidelines in determining the appropriateness of a specific request. She said that the Planning staff is recommending disapproval of the appellant’s appeal, for the following reason:

* - Denotes date by which Commission must either approve or disapprove plan.

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in reviewing the request for the addition of pea gravel to the front yard of the property at 239 North Mill Street, and in determining the appropriateness of that request. This is based on the design guidelines established by the local Historic Preservation Commission, specifically guidelines III.4.C, III.6.B, III.6.C, III.7.A and III.7.B, as they apply to the use of pea gravel as mulch and the subsequent loss of green space on the property.

Historic Preservation Staff Presentation – Bettie Kerr, Director of Historic Preservation; and Amelia Armstrong, Inspector, were present. Ms. Kerr submitted into the record the Certificate of Appropriateness application, the Board of Architectural Review minutes, Article 13 of the Zoning Ordinance (Historic Preservation section), and the Design Guidelines, as well as the minutes from the BOAR hearing. Ms. Armstrong presented several photographs to the Commission and gave a brief description of each. (A copy of the mentioned items is attached as an appendix to these minutes).

Appellant's Presentation – Dr. Field said that in his travels, he has seen boxwoods and pea gravel used all over the world, and he believed that pea gravel was an appropriate material because no green space will be lost. He then said that in reviewing the staff report, as well as the guidelines cited, he was unaware that there was a problem until he received notice from the Division of Historic preservation.

Dr. Fields offered a compromise, which was to plant clover-like vegetation over the pea gravel, which will be green from Spring to Fall months. He said that this will help omit the weeds in the walkways. He said that he was unaware that mulching was prohibited in the front yard or that a permit was needed. He disagreed with the statement in the staff report indicating that his behavior was egregious.

Planning Commission Questions – Ms. Copeland asked how long Dr. Fields had been a resident of this area. Dr. Fields said that he had moved to this area in 2003, after he sold his home in the Chevy Chase neighborhood. He then said that he loves this area and would not do anything that would make this property unattractive. Ms. Copeland then asked if Dr. Fields had lived within a historic district prior to this property. Dr. Fields replied negatively. Ms. Copeland gave a brief explanation of the history for the “sister” properties. She said that these units have identical floor plans and the front facades are nearly identical, with only a slight difference to each. She explained that the front yards are an extension of the architecture of those houses, and are subject to the National Historic Preservation Guidelines. She further explained that pea gravel was not being used during the time these units were constructed. The pea gravel is out of context for this area, as well as the time frame as to when the units were built. Ms. Copeland also noted that pea gravel is easily moved and could possibly enter the storm sewer. She then said that the use of pea gravel is distracting to the architecture of the house. She noted that other vegetation could be used and is appropriate for the time frame of the units. In conclusion, Ms. Copeland said that she understands that Dr. Fields takes great pride in his property; however, she is in support of the BOAR decision for disapproval.

Mr. Owens said that, in reviewing the area, there are houses in the general vicinity that use rock material in the front yard. Ms. Kerr replied affirmatively, and said that those properties only use rock material for small portions of the front yard. The majority of the front yard is still green space.

Mr. Cravens asked if Dr. Fields' compromise would be acceptable to the staff. Ms. Kerr said that with the original application there was no mention of a compromise on Dr. Fields' behalf, but he could resubmit an application to the BOAR for consideration.

Ms. Beatty asked if there is a penalty for this violation. Ms. Kerr said that there is no financial penalty at this time; rather, a notice letter is mailed to the appellant citing the violation, at which time the property owner would need to submit an application to the BOAR for consideration in that matter. At that time, the Board would determine whether or not the request is acceptable; and if it is not, the property owner would need to correct the violation.

Mr. Cravens asked if the Planning Commission has the final determination for this appeal; and if so, could the compromise be approved. Ms. Boland said that the Planning Commission cannot place themselves in the position of the BOAR to make that determination. She said that the appellant must submit an application to the BOAR, who will then review the request and make their recommendation as to the level of compliance for the alternative material. At that time, the BOAR could offer an alternative material for the ground cover. The Planning Commission cannot offer an alternative material that has not been reviewed or approved by the BOAR. She said that the Commission can only determine the compliance of the pea gravel on the appellant's property.

Ms. Beatty asked if the Commission can refer this request back to the BOAR. Ms. Boland replied negatively, and said that the Commission must make a decision on the current appeal. If the Commission's decision is disapproval, the appellant can then appeal to the Circuit Court.

Mr. Paulsen asked if the Commission denies this appeal, if the appellant can resubmit an application to the BOAR. Ms. Kerr said that the appellant could resubmit an application and present his compromise to the Board at that time. She then said that the Board would consider the new evidence and make a determination.

Ms. Boland confirmed that there is no filing fee for a BOAR application. Ms. Kerr said that, should Dr. Fields choose to resubmit to the BOAR, there would be no filing fee.

* - Denotes date by which Commission must either approve or disapprove plan.

Action - A motion was made by Ms. Copeland, seconded by Mr. Owens, and carried 7-0 (Holmes, Wilson, Roche-Phillips and Brewer absent) to disapprove the appeal and adopt the finding, for the reasons provided by the staff.

- B. ANNUAL REPORT FOR THE COURTHOUSE AREA** – The Commission will hear from Mr. Billy Van Pelt, who will present the required Annual Report from the Courthouse Area Design Review Board.

Staff Comments – Mr. King said that the staff had received communication from Mr. Van Pelt requesting postponement of the Annual Report for the Courthouse Area presentation to the November 18, 2010, Planning Commission meeting.

- C. ADOPTION OF THE OFFICIAL MEETING & FILING SCHEDULE FOR 2011** – The Chair presented the recommended Official Meeting and Filing Schedule for 2011, and requested that the Commission consider its adoption.

Action: A motion was made by Mr. Cravens, seconded by Mr. Owens, and carried 9-0 (Holmes and Wilson absent) to adopt the Official Meeting and Filing Schedule for 2011, as presented by staff.

- VII. STAFF ITEMS** – The Chairman will announce that any item a Staff member would like to present will be heard at this time.

- VII. AUDIENCE ITEMS** – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will **NOT** be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

VIII. NEXT MEETING DATES -

Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	November 18, 2010
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	November 24, 2010
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	December 2, 2010
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	December 2, 2010
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	December 9, 2010
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	December 16, 2010

- IX. ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 5:25 PM.

Carolyn Richardson, Chair

Mike Owens, Secretary